

## Annual Funding Notice for Defined Benefit Plans Required as Early as April 30, 2009

The Pension Protection Act requires an annual notice regarding the funding status of defined benefit plans. The first notice is due April 30, 2009, for a calendar year defined benefit plan that is not a "small plan." Guidance and model notices released by the Department of Labor (DOL) on February 10, 2009, are just in time – although after considering all of the information that must be included in the notice, you might feel that the DOL's model notice is a little late. The annual funding notice replaces the Summary Annual Report – but is much more involved than the Summary Annual Report.

### Content of Notice

The DOL guidance provides insight on information that must be included in the notice, such as:

- > The plan's funding status for three plan years;
- > Information regarding the plan's assets and liabilities for three plan years;
- > Counts of three categories of participants (active, terminated and receiving benefits, and terminated and entitled to future benefits);
- > A statement of the plan's funding policy;
- > A description of how the plan's assets are invested as of specific dates;
- > For any amendment, scheduled benefit increase or reduction, or other known event taking effect in the current plan year and having a material effect on plan liabilities or assets for the year, an explanation with projection of the effect of the amendment/increase/reduction/event on plan liabilities;
- > A description of plan benefits that are eligible to be guaranteed by the Pension Benefit Guaranty Corporation (PBCG); and
- > A statement regarding availability of the Form 5500.

A plan administrator may include additional or explanatory information, as long as it does not have the effect of misleading or misinforming participants.

The DOL provides two model notices: one for single-employer defined benefit plans (available at [www.dol.gov/ebsa/regs/FundingNoticeAppA.doc](http://www.dol.gov/ebsa/regs/FundingNoticeAppA.doc)) and one for multiemployer defined benefit plans (available at [www.dol.gov/ebsa/regs/FundingNoticeAppB.doc](http://www.dol.gov/ebsa/regs/FundingNoticeAppB.doc)). In addition, the DOL provides a format for transitional data – because certain funding information may not exist for plan years before 2008 (available at [www.dol.gov/ebsa/regs/FundingNoticeAppc.doc](http://www.dol.gov/ebsa/regs/FundingNoticeAppc.doc)). While plan administrators are not required to use a model notice, if a plan administrator provides an appropriately completed model notice in a timely fashion to all required parties, the DOL will take the position that the annual funding notice requirements have been met.

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## Providing the Notice

The annual funding notice must be provided within 120 days after the end of each plan year beginning after 2007 (except as discussed below for “small plans”). The notice must be provided to:

- > Each plan participant and beneficiary;
- > The PBGC;
- > Each labor organization representing plan participants; and
- > For a multiemployer plan, each employer that has an obligation to contribute to the plan.

However, plan liabilities do not exceed plan assets by more than \$50 million and the plan is not a multiemployer plan, the annual notice is required to be provided to the PBGC only on request.

The notice may be provided in written, electronic or other appropriate form, as long as it is reasonably accessible to the intended recipient. (The current standards for furnishing electronic summary plan descriptions may be relied on.)

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## Extended Due Date for Small Plans

For small plans, the annual funding notice must be provided no later than the date the Form 5500 is filed for the year (assuming it is filed in a timely manner). A plan is a “small plan” if the aggregate number of participants in the plan was less than 101 on each day of the plan year before the year to which the notice relates. For this rule, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of the employer’s controlled group) are treated as one plan, but only participants with respect to that employer or controlled group member are taken into account.

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## Insolvent Multiemployer Plans

A multiemployer plan need not comply with the annual funding notice requirements if it is insolvent and has complied with ERISA’s insolvency notice requirements.

## Employee Benefits & Executive Compensation Practice Group

Please let us know if we can be of assistance with preparing the funding notice by contacting any member of our Employee Benefits & Executive Compensation Practice Group listed below.

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